

UNITED STATES DISTRICT COURT  
DISTRICT OF PUERTO RICO

JORGE FRANCISCO SÁNCHEZ and  
DOLORES SERVICE STATION AND  
AUTO PARTS, INC.,

Civil No. 08-2151 (JAF)

Plaintiffs,

v.

ESSO STANDARD OIL DE PUERTO  
RICO, INC.,

Defendant.

**ORDER**

Plaintiffs, Jorge Francisco-Sánchez and Dolores Service Station and Auto Parts, Inc., bring this action against Defendant, Esso Standard Oil de Puerto Rico, Inc. (Docket No. 1.) Plaintiffs allege violations of the Resource Conservation and Recovery Act (“RCRA”), 42 U.S.C. §§ 6901-6992k. (Id.) In an amended answer, Defendant asserted a counterclaim for indemnification under Puerto Rico law. (Docket No. 222.) Plaintiffs allegedly agreed to indemnify Defendant for any costs and penalties incurred in litigation involving Plaintiffs’ service station. (Id.) In answering this counterclaim, Plaintiffs averred that this indemnification clause is prohibited by a federal statute, 42 U.S.C. § 6991b(h)(6)(C)(i). (Docket No. 291.)

On March 10, 2010, Defendant moved for partial summary judgment on this issue under Federal Rule of Civil Procedure 56.<sup>1</sup> (Docket No. 295.) Plaintiffs opposed (Docket No. 307), and

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<sup>1</sup> We grant a motion for summary judgment “if the pleadings, the discovery and disclosure materials on file, and any affidavits show that there is no genuine issue as to any material fact and the movant is entitled to

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1 Defendant replied (Docket No. 321). On March 15, Defendant filed an amended answer that  
2 repeats its allegations and claim with respect to indemnification. (Docket No. 301.) Plaintiffs  
3 followed suit by filing an answer that reiterates their defense under § 6991b(h). (Docket No. 305.)

4 Defendant argues that § 6991b(h)(6)(C)(i) cannot bar its claim for indemnification. (Docket  
5 No. 295.) Under that provision, no person liable under § 6991b(h) may transfer her liability to  
6 another by means of an indemnification agreement. 42 U.S.C. § 6991b(h)(6)(C)(i). However,  
7 § 6991b(h) refers to penalties imposed by federal and state authorities in enforcement actions, not  
8 costs incurred in private litigation. We, therefore, agree with Defendant that this statute does not  
9 bar Defendant's counterclaim for indemnification in the instant private civil action.

10 In view of the foregoing, we hereby **GRANT** Defendant's motion for partial summary  
11 judgment (Docket No. 295) to preclude Plaintiffs' resort to 42 U.S.C. § 6991b(h)(6)(C)(i).<sup>2</sup>

12 **IT IS SO ORDERED.**

13 San Juan, Puerto Rico, this 8<sup>th</sup> day of July, 2010.

14 s/José Antonio Fusté  
15 JOSE ANTONIO FUSTE  
16 Chief U.S. District Judge

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judgment as a matter of law." Fed. R. Civ. P. 56(c)(2). The movant may request "judgment on all or part of the claim." Fed. R. Civ. P. 56(a), (b).

<sup>2</sup> Plaintiffs also challenge the validity of the indemnification agreement, citing a Puerto Rico decision nullifying a similar clause. (Docket No. 307.) Although Plaintiffs raised this issue as a defense (Docket No. 305), Defendant's motion does not challenge it (see Docket No. 295). We, therefore, refrain from ruling on the viability of this defense against Defendant's indemnification claim.